



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Accept Dedication of Agricultural Easement as Required by Exhibit K to the Development Agreements between the City of Lodi and Frontiers Community Builders, Inc., for the FCB Southwest Gateway Project and the FCB Westside Project

MEETING DATE: July 18, 2007 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: That the City Council accept dedication of Agricultural Easement as required by Exhibit K to the Development Agreement between the City of Lodi and Frontiers Community Builders, Inc., for the FCB Southwest Gateway Project and the FCB Westside Project.

BACKGROUND INFORMATION: The Settlement Agreement between the City, Citizens for Open Government and FCB attached to the Development Agreements as Exhibit K requires FCB to secure perpetual agricultural conservation easements on land in San Joaquin County on an acre per acre basis for both the Westside and the Southwest Gateway Annexations. FCB has secured such easements on 160 Acres of land near Linden, California as indicated in the "Grant of Agricultural Mitigation Easement, attached to this Council Communication. Staff finds that the attached easement adequately satisfies the requirements of the Settlement Agreement, and recommends that the City Council accept the Dedication of the Easement and further authorize the City Manager to execute and record the Easement. FCB is required to pay the City of Lodi \$10,000 total to manage the Agricultural Conservation Easements.

FISCAL IMPACT \$10,000 to compensate for Management costs.



D. Stephen Schwabauer
City Attorney

APPROVED:



Blair King, City Manager

OFFICIAL BUSINESS

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City Of Lodi
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Lodi, California 95241-1910

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GRANT OF AGRICULTURAL MITIGATION EASEMENT

This Grant of Agricultural Mitigation Easement ("Easement") is made on this ____ day of July, 2007 by Richard and Denise Nassano (collectively "Grantor"), to the city of Lodi, a municipal corporation ("City"), for the purpose of permanently limiting the use of the real property described herein to agricultural uses and related activities as may be permitted from time to time under the agricultural zoning laws of San Joaquin County, California.

RECITALS

A. Grantor is sole owner in fee simple of that certain property zoned for agricultural uses and located in San Joaquin County, California and legally described in Exhibit A attached to and made a part of this Easement, consisting of a total of one hundred sixty (160) acres of land, comprised of one hundred forty eight and 67/100ths (148.67) acres of land ("mitigation acres"), currently identified by San Joaquin County Assessor's Parcel Number 093-120-06, plus eleven and 33/100ths (11.33) acres of land currently a portion of San Joaquin County Assessor's Parcel Number 093-120-09 as shown on the map attached as Exhibit B and made a part of this Easement, together with buildings and other improvements (collectively the "Property") Except for the existing buildings and improvements on the Property (the "Farmstead Area"), the Property is open land that has a soil quality, growing season, and moisture supply needed for sustained agricultural production.

B. This Easement is granted to the City to mitigate for the development of a total of one hundred sixty (160) acres of land to be developed as part of the Southwest Gateway and Westside residential developments located in Lodi, California by Frontier Land Companies, a California corporation doing business as Frontiers Community Builders and its successors and assigns (collectively "FCB"). This mitigation fully complies with the terms of that certain Final Environmental Impact Report ("EIR") entitled Lodi Annexation Environmental Impact Report first made available for public review on April 11, 2006, and which was approved by the City for Southwest Gateway by Resolution No. 2006-209 on the 15th day of November, 2006 and approved by the City for Westside by Resolution No. 2007-48 on the 21st day of March, 2007; to wit, to mitigate for those impacts set forth in that EIR pertaining to the loss of farmland as a result of the development of the Southwest Gateway

and Westside residential developments in the City equal in size (one 1 acre to 1 acre ratio) to the mitigation acres. This mitigation is specifically provided to the City in accordance with the terms set forth in that certain AGREEMENT TO AMEND SOUTHWEST GATEWAY DEVELOPMENT AGREEMENT AND REFRAIN FROM CHALLENGING LAND USE PROJECT dated November 15, 2006 executed by the City, FCB, and the Citizens for Open Government, an unincorporated association ("Citizens") which was approved by the City by Ordinance No. 1788 on the 15th day of November, 2006, and that certain AGREEMENT TO AMEND WESTSIDE DEVELOPMENT AGREEMENT AND REFRAIN FROM CHALLENGING LAM, USE PROJECT dated December 4, 2006 executed by the City, Citizens and FCB and which was approved by the City by Ordinance No. 1794 on the 21st day of March, 2007 after making all of the necessary findings, determined that the such an Easement would make a beneficial contribution to the conservation of agricultural land of San Joaquin County for the benefit of the residents of the City. The foregoing development agreements are hereafter collectively referred to as the "Westside/SW Gateway Development Agreements".

C. Grantor grants this Easement for valuable consideration to City for the purpose of assuring that, under City's perpetual stewardship, the agricultural productive capacity, including its prime soils and agricultural character of the Property will be conserved IN PERPETUITY, and that uses of the land that are inconsistent with the purpose set forth herein will be prevented. Grantor further acknowledges that the uses of the Property shall be consistent with the provisions of California Public Resources Code Sections 10260-10264, as amended from time to time.

D. The purpose of this Easement is recognized by, and the grant of this Easement will serve, the following clearly delineated governmental policies:

Section 815.1 of the California Civil Code, which defines conservation easements;

(ii) California Constitution Article XIII, section 8, California Revenue and Taxation Code, sections 402.1, 421.5 and 422.5, and California Civil Code section 815.1, under which this Easement is an enforceable restriction, requiring that the Property's tax valuation be consistent with restriction of its use for purposes of food and fiber production and conservation of natural resources;

(iii) Section 51220 of the California Government Code, which declares a public interest in the preservation of agricultural lands; and

(iv) The City's General Plan which includes, among other goals, the protection of farmlands from conversion to and encroachment of non-agricultural uses.

E. FCB acknowledges and represents that this Agreement arises out of FCB's independent decision to secure this perpetual easement from Grantor for City in order to settle a threatened CEQA action by Citizens and that it is therefore a voluntary conveyance by Grantor on FCB's behalf, and not a condition of a grant of an entitlement to FCB within the meaning of Civil Code Section 815.3(b).

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor voluntarily grants conveys to City, and City voluntarily accepts, a perpetual conservation easement, as defined by section 815.1 of the California Civil Code and California Public Resources Code Section 10211, and

of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. Purpose.

The purpose ("Purpose") of this Easement is to enable the Property to be dedicated for agricultural uses by preventing uses of the Property that will impair or interfere with the Property's agricultural productive capacity, its soils, and its agricultural character, values and utility.

2. Right to Use Property for Agricultural Purposes.

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural uses and related activities as may be permitted from time to time under the agricultural zoning laws of San Joaquin County, as set forth in the San Joaquin County, California General Plan and Development Title, as amended from time to time.

3. Prohibited Uses.

Grantor shall not perform or knowingly allow others to perform, my act on or affecting the Property that is inconsistent with this Easement. Any use or activity that would impair the agricultural productive capacity of the Property is prohibited. This Easement authorizes City to enforce these covenants in the manner described herein. However, unless otherwise specified, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Easement relieves it of any obligation or restriction on the use of the Property imposed by law.

4. Permission of City.

Where Grantor is required to obtain City's permission or approval for a proposed action hereunder, said permission or approval (a) shall be sought and given in writing, and (b) shall be sought, in all applicable cases, by Grantor prior to taking the proposed action. City shall have sixty (60) days after the receipt of the written request from Grantor to grant or deny permission to Grantor. If the City does not deny Grantor's written request within said sixty (60) days, the City shall be deemed to have approved the request. If, in the judgment of City, the proposed use or activity should not be permitted in the form proposed, but could be permitted if modified, then City's response shall propose to Grantor the suggested modification(s) and/or conditions that would permit the use or activity. If Grantor disagrees with the City's decision in any respect, the parties shall mediate their disagreement.

5. Construction or Placement of Permitted Buildings and Other Structures.

Grantor may undertake construction, installation or placement of buildings, structures, or other improvements on the Property only as permitted in paragraphs (a) through (f) below. Grantor shall advise the City in writing prior to undertaking any construction or other improvement on the Property as permitted herein so as to enable City to keep its records current and to confirm compliance with the Easement. All "improvements", as described herein, shall be constructed in accordance with applicable law and regulations of San Joaquin County. All other construction, installation or placement of buildings, structures, or other improvements on the Property is prohibited.

For purposes of this Paragraph 5, the term "improvements" shall not refer to trees, vines, bushes or other plants cultivated for commercial or personal agricultural purposes, nor shall it refer to irrigation improvements necessary or desirable by Grantor to irrigate the Property for agricultural purposes, and City's consent shall not be required in connection with any such activities.

(a) **Fences** – Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of customary agricultural management and for security of farm produce, crops, livestock, equipment, water resources, residences and all other improvements on the Property.

(b) **Agricultural Structures & Improvements** – Existing agricultural structures and improvements as shown in Exhibit B may be repaired, enlarged, and replaced at their current locations within the Farmstead Area for agricultural purposes. New buildings and other structures and improvements to be used solely for commercial or personal agricultural production on the Property, including barns, equipment sheds and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised by Grantor on the Property (other than any dwelling or agricultural employee housing) may be built on the Property within the Farmstead Area. In addition, construction or installation of agricultural buildings or improvements outside the Farmstead Area may be built with the permission of City pursuant to Paragraph 4 if City determines both of the following apply: (i) the building or improvement shall be used for agricultural production purposes or sale of farm products predominantly grown or raised by Grantor on the Property; and (ii) the building or improvement cannot reasonably be accommodated within the Farmstead Area.

(c) **Single-Family Residential Dwellings** – The single-family dwelling and related buildings shown in Exhibit B may be repaired, enlarged or replaced at their current location entirely within the Farmstead Area shown in Exhibit B. Moreover, there may be constructed in the farmstead area of each of the remaining parcels after the parcel split(s), no more than one (1) single-family dwelling (which may, if otherwise permissible under applicable local laws, include one (1) attached or detached "second unit" as defined in California Government Code Section 65852.2) and, except as otherwise provided in this Easement, ancillary improvements reasonably related to the use and occupancy thereof. Improvements within any such farmstead area may be repaired, enlarged, replaced, or relocated entirely within such farmstead area. No other residential structures may be constructed or placed on the Property except for agricultural employee housing per Paragraph 5(d).

(d) **Agricultural Employee Housing** – New agricultural employee housing may be constructed or placed on the Property if permissible within the zoning rules applicable to the Property, if requested in writing by the Grantor only with the permission of City and only if Grantor can demonstrate to City's satisfaction that such agricultural employee housing is reasonable and necessary for agricultural purposes. Any agricultural employee housing must be located entirely within a given farmstead area.

(e) **Utility Services and Septic Systems** – Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services solely to and serving the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved, but shall be located, to the greatest extent practicable, within a given farmstead area.

(f) **Recreational Improvements** - Private recreational improvements (e.g. swimming pool, tennis court) for the personal, non-commercial use of the occupants of any single-family dwelling upon the Property and their guests are permitted within any given farmstead area. Helicopter pads, golf courses, recreational vehicle raceways and airplane landing strips are prohibited.

6. **Subdivision of Property Restricted; Lot Line Adjustments.**

The division, subdivision, or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited; provided, however, that Grantor and City agree that the Property can only be split into separate legal parcels if done so pursuant to the Property's General Agricultural zoning applicable to the Property as now or hereafter permitted. Grantor agrees that Grantor will not apply for or otherwise seek recognition of any other legal parcels within the Property over and above those set forth in this provision. Lot line adjustments may be permitted solely with the approval of City and subject to applicable land use authority of San Joaquin County, and for purposes of maintaining, enhancing or expanding agricultural practices or productivity on the Property.

7. **Development Rights.**

Except as specifically reserved for or set forth in this Easement, Grantor hereby grants to City all development rights that are now or shall hereafter be allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights but shall only permit development as set forth herein.

8. **No Waste.**

No waste, refuse, trash, vehicle parts, rubbish, debris, junk or waste shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property as permitted herein, and except in accordance with applicable laws. The storage of agricultural products, agricultural chemicals (including herbicides, pesticides, fungicides, fertilizers, and other materials commonly used in farming operations), agricultural byproducts and agricultural equipment, all of which are used or produced on the Property in accordance with applicable laws are expressly permitted.

9. **Water Rights and Water Sources.**

Grantor shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property as of the date of this Easement. Grantor shall not permanently transfer, encumber, lease, sell, or otherwise separate water or water rights or water access/use rights from title to the Property itself except as may be part of the parcel splits permitted under Paragraph 6, above. Grantor retains the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not significantly impair or disturb the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the

agricultural management potential of the Property, provided such alteration is consistent with the Purpose of this Easement and is carried out in accordance with applicable laws.

10. Rights Retained by Grantor.

Except as expressly set forth herein, as owner of the Property, Grantor reserves all interests in the Property not transferred, conveyed, restricted or prohibited by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, gift, devise or otherwise transfer the Property to anyone Grantor chooses, the right to divide the larger Property into smaller parcels of land so long as such division is in compliance with the General Agricultural zoning rules and regulations now or hereafter permitted, as well as the right to privacy and the right to exclude any member of the public from trespassing on the Property and any other rights consistent with the purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property. Nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law.

11. Responsibilities Not Intended.

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on City, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

(a) **Taxes** - Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If City ever pays any taxes or assessments on the Property, or if City pays levies on Grantor's interest in order to protect City's interest in the Property, Grantor will reimburse City for the same.

(b) **Upkeep and Maintenance** - Grantor shall be solely responsible for the upkeep and maintenance of the Property. City shall have no obligation for the upkeep or maintenance of the Property.

(c) **Liability and Indemnification** - Grantor shall indemnify, protect, defend and holds harmless City, Citizens and FCB, and their officers, directors, members, shareholders, employees, contractors, legal representatives, agents, successors and assigns (collectively, "Agents and Assigns") from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way connected with or relating to the Property or the Easement (but this provision shall not apply in the event of a challenge by a third party to the legality of this Mitigation Easement). Grantor shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, violation of the law or of this Easement or other matter related to or occurring on or about the Property, regardless of cause, unless due to the gross negligence or intentional misconduct of City.

(d) **No Responsibility by City, Citizens or FCB** - Neither City, Citizens nor FCB, nor any of their Agents and Assigns, shall have any responsibility for the operation of the Property, monitoring the uses of the Property, or the protection of Grantor, the public or any third parties from risks or uses relating to the Property.

12. City's Monitoring and Enforcement of Easement.

City shall manage its responsibilities as holder of this Easement so as to uphold the Purpose of this Easement. City's responsibilities include, but are not limited to, annual monitoring visits, record keeping, and enforcement, for the purpose of preserving the Property's agricultural productive capacity in perpetuity. City's annual monitoring visit to the Property shall be during business hours on a given weekday each January following the effective date of this Easement. City shall give Grantor at least one (1) week prior written notice of its visit by no more than two of City's representatives, who shall view the Property solely for the purpose of observing compliance or non-compliance with the terms of this Easement. City's annual report shall describe the condition of the Property, stating whether any violations were observed during the Visit, describing any corrective actions to be taken by Grantor and whether any transfers of interest in the Property were made by Grantor during the applicable period. Failure to make such monitoring visits shall not impair the validity of this Easement or limit its enforceability in any way.

City shall indemnify, defend with counsel of Grantor's choice, and hold Grantor harmless from each and every claim, expense, loss, liability and damages, including Grantor's attorneys' fees, arising out of City's entry on the Property, unless caused by a violation of this Easement by Grantor.

City may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement at any time, including the right to prevent and correct violations of this Easement. Grantor shall indemnify, protect, defend and hold harmless City and its respective officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of Grantor's violation of this Easement.

If City believes in good faith that there has been a violation of this Easement, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and purposes of this Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity of the Property, City shall give Grantor written notice of the violation and thirty (30) days to correct it, as a condition precedent to filing any legal action.

If a court with jurisdiction determines that a violation of this Easement has occurred, City may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy, including (i) restoration of the Property to its condition existing prior to such violation; and (ii) an award for all City's expenses incurred in stopping and correcting the Violation, including but not limited to its reasonable attorneys' fees. City's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

13. Transfer of Easement.

If City should desire to transfer this Easement, City must first obtain written permission from Grantor, which permission shall not be unreasonably withheld.

If this Easement is ultimately assigned on that basis, it may only be assigned or transferred by City to: (i) a private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code and meets the requirements of section 815.3(a) of the California Civil Code and has similar purposes to preserve agricultural lands and open space; or (ii) a public agency authorized to hold interests in real property as provided in section 815.3(b) of the California Civil Code. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on City by the terms of this Easement and is expressly willing and able to hold this Easement for the purpose for which it was created. All assignment and assumption agreements transferring the Easement shall be duly recorded in San Joaquin County.

If City or its successors ever ceases to exist or no longer qualifies under section 170(h) of the U.S. Internal Revenue Code, or applicable state law, a court of competent jurisdiction, in consultation with Grantor, shall select an appropriate private or public entity to which this Easement shall be transferred.

14. Transfer of Property Interest.

Any time the Property itself, or any interest therein, is to be transferred by Grantor to any third party, Grantor shall notify City in writing at least thirty (30) days prior to the transfer of the Property or interest. Any document of conveyance by Grantor shall expressly incorporate this Easement by reference. Any lease of the Property shall expressly incorporate this Easement by reference. Failure of Grantor to comply with the terms of this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way,

15. Consideration to Grantor for Easement.

Conditioned upon, and in full satisfaction of, the requirements of the Westside/SW Gateway Development Agreements, including the complete initial approvals of this Easement by both the City and Citizens, then, and on that basis, FCB has agreed to pay Grantor, and Grantor has agreed to receive from FCB, a fair and mutually agreeable price for this Easement to be paid in installments pursuant to the terms of a related agreement executed concurrently herewith by FCB and Grantor.

16. Amendment of Easement; Recordation.

This Easement may be amended only with the written consent of Grantor and the City. Any such amendment shall be consistent with the Purpose of this Easement, and shall comply with all applicable laws, including section 170(h) of the Internal Revenue code, and any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the purpose of this Easement nor the status or rights of either party under the terms of this Easement. This Easement as well as any amendment to it shall be recorded in San Joaquin County, California.

17. Termination of Easement.

(a) It in the intention of the parties that the purpose of this be carried out forever. Liberal construction is expressly required for purposes of effectuating this Easement in perpetuity and

the parties intend that this Easement shall be perpetual notwithstanding any future economic hardship. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can be terminated or altered, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. Should this Easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement. In any such event, all relevant related documents shall be updated and re-recorded by City in San Joaquin County to reflect the modified easement area. City shall be notified at least sixty (60) days prior to initiation of any proceedings to terminate or alter this Easement.

(b) No inaction or silence by City shall be construed as abandonment of the Easement. The fact that the Property is not in agricultural Use is not reason for termination of this Easement. Other than pursuant to eminent domain or purchase in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate the provisions of this Easement.

18. Interpretation.

This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its purpose. References to authorities in this Easement shall be to the statute, rule, regulation, ordinance or other legal provision that is in effect at the time this Easement becomes effective. No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

19. Perpetual Duration; Successors.

This Easement, pursuant to California Civil Code section 815.2, shall run with the land in perpetuity. Every provision of this Easement that applies to any party named herein shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to City, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, or merged into, or modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by City or its successors or assigns.

20. Grantor's Environmental Warranty.

Grantor warrants that it has no actual knowledge of a release or threatened release of Hazardous Materials (as defined below) on the Property and hereby promises to defend and indemnify City, FCB and Citizens against all litigation, claims, administrative actions, costs, demands, penalties and damages, including reasonable attorneys' fees and costs, arising from or connected with any release of Hazardous Materials or violation of any Environmental Laws (as defined below).

Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement be construed such that it creates in or gives City, FCB or Citizens:

(a) the obligations or liability of an "owner" or "operator" or "arranger" as those words are defined and used in Environmental Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC section 9601 et seq. and hereinafter "CERCLA");

(b) the obligations or liability of a person described in CERCLA at 42 USC section 9607 (a)(3) or (4);

(c) the obligations of a responsible person under any applicable Environmental Laws;

(d) the right to investigate and remediate any Hazardous Materials associated with the Property; or

(e) any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up my Hazardous Materials associated with the Property.

The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC section 9601 et seq.), the Hazardous Materials Transportation Act (49 USC section 5101, et seq.), the Hazardous Waste Control Law (California Health and Safety Code section 25100 et seq.), the Hazardous Substance Account Act (California Health and Safety Code section 25300 et seq.), Resource Conservation and Recovery Act, as amended (42 USC section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 USC section 1251 et seq.); the Toxic Substances Control Act, as amended (15 USC section 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (42 USC section 300f et seq.) and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

The term "Environmental Laws" includes, without limitation, my federal, state or local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

21. Grantor's Title Warranty: Debt: No Prior Conservation Easements.

Grantor represents and warrants that Grantor has good fee simple title to the Property, free from any and all liens or encumbrances except as shown on that certain Preliminary Report prepared by First American Title Company of Stockton as of May 30, 2007 at 7:30 a.m. as Order No. 8705-2809528 incorporated herein by this reference, and hereby promises to defend against all claims contrary to this representation that may be made against the Property.

Notwithstanding the foregoing Grantor may encumber the Property now or in the future with debt in the ordinary course of Grantor's agricultural business operations, including debt associated with the construction of structures and improvements that may built or installed on the Property in accordance with the terms of this Easement.

Grantor represents and warrants that the Property is not subject to any other prior conservation easements.

If Grantor discovers at any time that my outstanding interest in the Property exists that is not disclosed herein, Grantor shall immediately notify City of the discovery, and Grantor shall take all necessary steps to ensure that the interest is made subject to this Easement and that the existence of the interest or the exercise of any rights under it does not interfere with the Purpose of this Easement.

22. Subsequent Easements.

Grantor may grant subsequent conservation easements or use restrictions on the Property provided that such easements or use restrictions do not restrict the opportunity for husbandry practices on the Property, or interfere with any of the terms of this Easement as determined by City. "Husbandry practices" means agricultural activities, such as those specified in section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. City's written approval shall be obtained at least thirty (30) days in advance of executing any proposed subsequent easement or use restriction on the Property, and such subsequent easements or use restrictions shall make reference to this Easement and be subordinate to this Easement. City shall disapprove any proposed subsequent easement or use restriction that appears to restrict husbandry practices, or diminishes or impairs the agricultural productive capacity of the Property.

With City's prior permission, Grantor may grant access and utility easements over the Property to adjacent landowners. City will not withhold consent to any such access and utility easements so long as such easements shall not significantly diminish or impair the agricultural productive capacity of the Property. Any such subsequent easement shall be in writing and shall be duly recorded in San Joaquin County.

23. Notices.

Any notices to Grantor and City required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to the following addresses, unless a party has been notified by the other of a change of address:

To Grantor: Richard and Denise Nassano
P.O. Box 186
23400 Milton Road
Linden, California 95236

With copy to: John J. Patridge,
Attorney At Law
7540 Shoreline Drive, Suite F
Stockton, California 95219
(Attorney for Grantor)

To City: City Of Lodi
Attention: City Manager
P.O. Box 3006
Lodi, California 95241-1910

24. Severability.

If any term, provision, covenant, condition or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective the remainder of the Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

25. Entire Agreement.

Except for the related Easement Consideration Agreement executed this date by FCB and Grantor, this Easement is the final and complete expression of the agreement between the parties with respect to this subject matter; provided, further, that any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superseded by this written instrument.

26. Exhibits.

All Exhibits attached to this Easement are incorporated in this Easement by this reference.

27. Acceptance.

As attested by the signature of its City Manager affixed hereto, in exchange for valuable consideration, City hereby accepts without reservation the rights and responsibilities conveyed by this Grant of Agricultural Mitigation Easement.

TO HAVE AND TO HOLD this Grant of Agricultural Mitigation Easement unto City, its successors and assigns. forever.

In Witness Whereof, Grantor and City, intending to legally bind themselves, have set their hands on the date and year first written above.

GRANTOR

Richard and Denise Nassano

By: Richard Nassano
Richard Nassano

By: Denise Nassano
Denise Nassano

CITY

City of Lodi:

By: _____

Blair King, City Manager

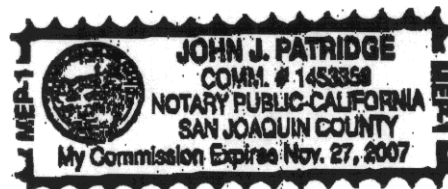
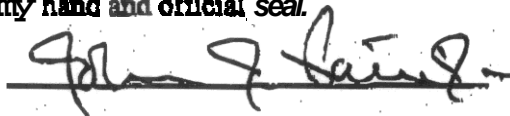
ACKNOWLEDGMENTS

STATE OF CALIFORNIA) ss
COUNTY OF SAN JOAQUIN)

On July 9, 2007 before me, JOHN J. PATRIDGE, Notary Public of the State of California, personally appeared **Richard Nassano and Denise Nassano**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity or capacities, and that by his/her/their signature or signatures on the instrument the person or persons or the entity upon behalf of which the person or persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature



STATE OF CALIFORNIA) ss
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, Notary Public of the State of California, personally appeared **Blair King**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity or capacities, and that by his/her/their signature or signatures on the instrument the person or persons or the entity upon behalf of which the person or persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____